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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

NORTHLAND INSURANCE COMPANY, Plaintiff, v. MIDWEST CASH, INC. and MISTY YARBER, Defendants.	Case Number 3:17-cv-400

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Plaintiff Northland Insurance Company ("Northland"), by its undersigned attorneys, hereby makes its Complaint for Declaratory Judgment and Other Relief ("Complaint") against Midwest Cash, Inc. ("Midwest Cash") and Misty Yarber ("Yarber"), and alleges as follows:

I. NATURE OF ACTION

1. This is an insurance coverage action seeking declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. Northland seeks a determination that it has no duty to defend or indemnify Midwest Cash under a pawnbrokers policy issued by Northland ("the Northland Policy") with respect the underlying lawsuit identified in this Complaint.

II. PARTIES

2. Plaintiff Northland is an insurance company organized and existing under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut.

3. Defendant Midwest Cash is an Illinois corporation and has its principal place of business in Carbondale, Illinois. Midwest Cash is the named insured under the Northland Policy at issue and further described in this Complaint, and is the named defendant in the underlying lawsuit identified in this Complaint.

4. Upon information and belief, Defendant Yarber is a resident of Harrisburg, Illinois. Yarber has been named as a party to the extent that she may be deemed to be an interested or necessary party in this matter.

III. JURISDICTION AND VENUE

5. This Complaint is brought pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

6. An actual justiciable controversy exists between Northland and Midwest Cash within the meaning of 28 U.S.C. § 2201 regarding whether Northland has a duty to defend and indemnify Midwest Cash under the Northland Policy, as more particularly described below.

7. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and the suit is between citizens of different states.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the events or omissions giving rise to this claim occurrence in this judicial district, in that Midwest Cash resides in this judicial district for venue purposes, and the underlying lawsuit is pending in this judicial district.

IV. UNDERLYING LAWSUIT

9. On September 22, 2016, Yarber filed a lawsuit against Midwest Cash in the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, entitled: *Misty Yarber v. Midwest Cash, Inc., d/b/a Midwest Cash Loans & Bargains*, Case No. 16-L132 ("the *Yarber* lawsuit"). (A copy of the *Yarber* lawsuit is attached hereto and made a part hereof as Exhibit "A").

10. The *Yarber* lawsuit relates to a motorcycle collision that occurred on September 27, 2014 at approximately 12:54 a.m., when the motorcycle on which Yarber was riding as a passenger left the roadway and crashed into a ditch. (Exhibit A, ¶¶18-21).

11. According to the *Yarber* lawsuit, the motorcycle at issue was a 1996 Buell model. It is alleged that when manufactured, every 1996 Buell motorcycle came equipped with a spring to prevent the motorcycle's side stand that comes down while the motorcycle is being operated. (Exhibit A, ¶9-10).

12. Plaintiff contends that a motorcycle side stand that comes down while the motorcycle is being operated can cause serious injury or death by causing the operator to lose control of the motorcycle. (Exhibit A, ¶11).

13. Midwest Cash allegedly sold the used motorcycle at issue in 2009 or 2010 to Steve Caraway at its pawn shop in Marion, Illinois. (Exhibit A, ¶8).

14. Yarber further claims that prior to Midwest Cash's sale of the motorcycle to Caraway, the motorcycle had been "chopped", *i.e.*, the motorcycle's original design had been substantially modified with various, non-original parts to achieve a certain look or ride. (Exhibit A, ¶12).

15. The "chopped" motorcycle that Midwest Cash sold to Caraway allegedly included a non-original side stand that was not equipped with a spring to prevent the stand from coming down while the motorcycle was being operated. (Exhibit A, ¶13).

16. The *Yarber* lawsuit alleges that the dangerous nature of the motorcycle's "chopped" side stand would have been apparent to an experienced, commercial used product seller like Midwest Cash. However, the dangerous nature of the stand would not have been apparent to ordinary consumers. (Exhibit A, ¶¶14-15).

17. The *Yarber* lawsuit alleges that following Midwest Cash's sale of the motorcycle to Caraway, Caraway sold the motorcycle to Greg Atkins in late 2013 or early 2014. Atkins allegedly transferred title of the motorcycle to Samuel Goben in or about mid-2014. (Exhibit A, ¶16-17).

18. On September 27, 2014, Curtis Goolsby was allegedly operating the "chopped" motorcycle with Goben's permission, and with Yarber as a passenger, when he lost control of the motorcycle and crashed into a ditch on the southwest side of Route 142 in Broughton, Illinois. Exhibit A, ¶¶18-21).

V. THE NORTHLAND POLICY

19. Northland issued a Pawnbrokers Policy, No. NJ105794, to Midwest Cash effective October 14, 2013 through October 14, 2014, with limits of $1 million each occurrence and $2 million in the general aggregate. (A copy of the Northland Policy with potential confidential/proprietary information redacted therefrom is attached hereto and made a part hereof as Exhibit "B").

20. The Northland Policy provides, in part, as follows:

BUSINESSOWNERS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F** – Liability and Medical Expenses Definitions.

A. Coverages

1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage", "personal injury", or "advertising injury" to which this insurance does not apply….

B. Exclusions

. . .

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured….

F. Liability And Medical Expenses Definitions

. . .

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment"….

EXCLUSION – AUTO PAWN

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
BUSINESSOWNERS LIABILITY COVERAGE FORM

This insurance does not apply to "bodily injury," "property damage," or medical expense arising out of:

A. The ownership, maintenance, use or entrustment of any auto or other vehicle subject to motor vehicle registration; or

B. Premises or operations engaged in the business of pawning autos or any other vehicle subject to motor vehicle registration.

EXCLUSION TITLE PAWN

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
BUSINESSOWNERS LIABILITY COVERAGE FORM

This insurance does not apply to "bodily injury," "property damage," or medical expense arising out of or resulting from Title Pawn operations.

* * *

COUNT I – DECLARATORY JUDGMENT

21. Northland repeats and realleges the allegations in Paragraphs 1 through 20 as though fully set forth herein Count I.

22. The Northland Policy defines "auto" as a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment, and a motorcycle has been held by Illinois courts to be a "motor vehicle".

23. The Aircraft, Auto or Watercraft exclusion contained in the Northland Policy, which excludes coverage for bodily injury arising out of the ownership, maintenance, use or entrustment to others of any "auto" owned or operated by or rented or loaned to any insured, precludes coverage for Midwest Cash in connection with the *Yarber* lawsuit as plaintiff's injuries allegedly arose out of Midwest Cash's ownership of the motorcycle.

24. Additionally/alternatively, the Auto Pawn exclusion contained in the Northland Policy, which excludes coverage for bodily injury arising out of the ownership, maintenance, use or entrustment of any auto or other vehicle subject to motor vehicle registration; or premises or operations engaged in the business of pawning autos or any other vehicle subject to motor vehicle registration precludes coverage for Midwest Cash in connection with the *Yarber* lawsuit as plaintiff's injuries allegedly arose out of Midwest Cash's ownership of the motorcycle or out

of Midwest Cash's business in pawning a vehicle subject to motor vehicle registration, *i.e.* the motorcycle.

25. Additionally/alternatively, coverage would be precluded to Midwest Cash to the extent that the Title Pawn exclusion contained in the Northland Policy is applicable, which excludes coverage for bodily injury arising out of or resulting from Title Pawn operations.

Wherefore, pursuant to the Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Northland requests that the Court find and declare the following:

A. Northland does not have a duty to defend Midwest Cash under the Northland Policy, No. NJ105794, in connection with the *Yarber* Lawsuit, Court No. 16-L132;

B. Northland does not have a duty to indemnify Midwest Cash under the Northland Policy, No. NJ105794, in connection with the *Yarber* Lawsuit, Court No. 16-L132; and

C. Northland is entitled to such additional relief that this Court deems just and equitable.

Respectfully submitted,

PLAINTIFF, NORTHLAND INSURANCE COMPANY

By: /s/ Jamie L. Hull

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